

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Proposed Policies and Programs  
Governing Low-Income Assistance Programs.

Rulemaking 01-08-027  
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ADDRESSING ELIGIBILITY FOR COMPENSATION AWARD**

Pursuant to Pub. Util. Code §§ 1801-1812, the Latino Issues Forum and Greenlining Institute (Joint Intervenors) filed a Notice of Intent (NOI) to claim compensation for their participation in this proceeding. This ruling finds that these parties are eligible to file their claims for compensation.

**Timeliness**

Pub. Util. Code § 1804(a)(1) says in relevant part that "A customer who intends to seek an award...shall, within 30 days after the prehearing conference is held, file and serve...a notice of intent to claim compensation."

A prehearing conference in this proceeding was held on February 8, 2002. Joint Intervenors filed an NOI on March 7, 2002. Hence the NOI was timely filed.

**Qualification as Customers**

Administrative Law Judge rulings issued pursuant to Pub. Util. Code § 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer and in which of the three statutory categories the customer falls into. (Decision (D.) 98-04-059, mimeo. p. 31.) Section 1802(b) provides in relevant part that:

“Customer means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represents the interests of residential ratepayers...”

D.86-05-007 dated May 7, 1986 interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest; a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A Category 2 customer is one who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization’s articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that are residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorized him or her to represent that customer. (D.98-04-059, mimeo. pp. 29-30, 83, 88.)

The by-laws of Joint Intervenors authorize them to represent the interests of residential ratepayers before state and federal regulatory agencies and in court.<sup>1</sup> Latino Issues Forum estimates that its members represent a constituency which is divided 85-15% between residential and small business customers, respectively. For the Greenlining Institute, the division is estimated to be 75-25%. Accordingly, Joint Intervenors qualify as a Category 3 customer.

### **Planned Participation**

Pub. Util. Code § 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

In their NOI, Joint Intervenors state that their active participation is intended to "ensure that the vulnerable consumers whom they represent, including low-income and limited English speaking customers in California, continue to be protected from exorbitant utility rates." (NOI, p. 2.) More

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<sup>1</sup> Joint Intervenors have filed copies of their organizations' bylaws in numerous other notices of intent to seek compensation, including one filed on March 4, 1999 in A.98-12-005. See also, the Administrative Law Judge's Ruling Addressing Eligibility For Compensation Awards in A.99-07-002 et al. dated October 12, 1999.

specifically, Joint Intervenors identify the following issues affecting the implementation of low-income assistance programs that they plan to address in this proceeding: categorical enrollment, program penetration rates, rapid deployment efforts, recertification procedures, leveraging in program delivery and master-meter issues.

To the extent that these same interests are shared by other parties, or are represented by other parties which do not seek intervenor compensation (e.g., the Office of Ratepayer Advocates), Joint Intervenors run the risk that their efforts may merely duplicate those of others. To the extent that such duplication is found, they are at risk of receiving reduced or no compensation for such efforts. The NOI does not provide us with sufficient information to make such a determination at this time. The Commission will consider the issue of duplication of effort when it reviews the subsequent request for compensation.

The Commission has also explained that participation by intervenors is not necessary for a fair determination of the proceeding if the customer argues issues that are irrelevant, beyond the scope of the proceeding or beyond the Commission's jurisdiction. (*Ibid*, pp. 31-32.) Here, I preliminarily find that the planned participation of Joint Intervenors, as described in their joint NOI, is necessary for a fair determination of the proceeding. The issues that Joint Intervenors intend to address have been identified in the Assigned Commissioner's scoping ruling dated February 27, 2002.

### **Estimated Compensation Request**

Joint Intervenors present the following joint budget estimates:

#### **Attorney/Advocate Fees**

Fees of Robert Gnaizda (50 hours at \$415/hour)	\$20,750
Fees of Susan E. Brown (125 hours at \$325/hour)	\$40,625
Fees of Enrique Gallardo (50 hours at \$265/hour)	\$13,250

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Fees of Itzel Berrio (75 hours at \$265/hour)	\$19,875
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<u>Sub-Total</u>	<b><u>\$94,500</u></b>
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Expert Fees

Fees of John Gamboa (25 hours at \$250/hour)	\$ 6,250
Fees of Viola Gonzalez (25 hours at \$250/hour)	\$ 6,250
Policy interns and Greenlining fellows (50 hours @ \$100)	\$ 5,000
<u>Sub-Total</u>	<u>\$17,500</u>

Incidental Costs

Postage, photocopies, deliveries, supplies and telephone	\$ 5,000
Travel	\$ 4,000
<u>Sub-Total</u>	<u>\$ 9,000</u>

**TOTAL** **\$121,000**

The NOI fulfills the requirements of Pub. Util. Code § 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested. Although this ruling does not address the merits of the final compensation claim by Joint Intervenors, I reiterate and clarify my cautionary observations in a ruling dated October 12, 1999 in Application (A.) 99-07-002 et al. In that ruling, I cautioned Joint Intervenors to carefully review Commission orders and be mindful of the areas where the Commission reduced either the hourly rates or number of hours claimed. In particular, I noted that the hourly fees proposed for attorney and expert fees appeared substantially higher than the levels recently approved. (Ruling, pp. 6-7.) <sup>2</sup>

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<sup>2</sup> Joint Intervenors should also refer to the October 12, 1999 ruling in A. 99-07-002 et al. regarding the issue of compensation of energy board members. The Commission is in the process of selecting representatives to the Low Income Oversight Board. To the extent that Joint Intervenors are represented on the Board, they should not be eligible for intervenor compensation, as discussed in that ruling.

### **Significant Hardship**

Pub. Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (See D.98-04-059, mimeo. pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information (which may be filed under seal) that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a *group* of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Pub. Util. Code § 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, § 1804(b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding. This rulemaking commenced with its filing on August 23, 2001. Accordingly, any finding that a customer would experience significant hardship,

which was made within one year of August 23, 2001 creates a rebuttable presumption of that customer's eligibility in this proceeding.

Joint Intervenors have elected not to include a showing at this time, so they must show significant financial hardship if and when it files a request for compensation. These parties should take note of the financial hardship discussion in D.98-04-059, and demonstrate within any request for compensation that they meet the relevant financial hardship test.

Today's ruling goes only to the eligibility of Joint Intervenors to claim compensation. It does not address the final merits of the claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Public Utilities Code Article 5.

**IT IS RULED** that:

1. Joint Intervenors timely filed a joint Notice of Intent for compensation in this proceeding.
2. The Joint Intervenors are a Category 3 customer.
3. Joint Intervenors have fulfilled the requirements of Pub. Util. Code § 1804(a)(2)(A).
4. Joint Intervenors shall make a showing of significant financial hardship in any request for compensation in this proceeding.
5. Joint Intervenors are eligible for an award of compensation for a substantial contribution in this proceeding.

Dated March 29, 2002, at San Francisco, California.

/s/ MEG GOTTSTEIN

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Meg Gottstein  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award on all parties of record in this proceeding or their attorneys of record.

Dated March 29, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

